IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

MFA.No. 111 of 2006() &
CROSS OBJECTION NO.81 OF 2006

WCC.8/1995 of W.C.C.,KOLLAM
.....

APPELLANT:

THE ORIENTAL INSURANCE CO.LTD.,
PUNALUR, REPRESENTED BY ITS ADMINISTRATIVE
OFFICER, REGIONAL OFFICER, ERNAKULAM NORTH,
KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:
---

1. A.YOUSUF KUNJU, NIZA MANZIL,
NEAR CINE PRINTERS, MAMOODU,
CHANDANATHOPU P.O., KOLLAM.

2. TRAVANCORE PLYWOOD INDUSTRIES LTD.,
PUNALUR, REPRESENTED BY ITS
RECEIVER & MANAGER.

R1 BY ADV. SRI.M.V.THAMBAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/02/2007 ALONG WITH CROSS OBJECTION NO.81/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.1118/2006 IN MFA. NO.111/2006

DISMISSED

6/2/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN,J.

M.F.A.NO.111 OF 2006 &
CROSS OBJECTION NO.81 OF 2006

Dated this the 6th day of February, 2007

JUDGMENT

This appeal arises out of the judgment in W.C.C.No.8/95 dated 21/1/2005 on the file of the Court of the Commissioner for Workmen's Compensation, Kollam. The Insurance Company, who is the 2nd respondent in the claim petition, is the appellant herein. The main contention is that the group insurance policy taken by the employer does not cover the liability under the Workmen's Compensation Act and as such it is not an act policy in respect of the said Act. It is their specific contention that as per the group insurance policy issued, which is marked as Ext.B1, their liability is limited to the percentage of disability as certified by the Doctor on

the sum insured in respect of the concerned employee. In this case the maximum amount insured as respect the employee concerned is only Rs.40,000/-. 20% being the disability as certified by the Doctor, their liability is limited to an amount of Rs.8,000/- only. Ext.A2 is the disability certificate issued by the Medical Board, District Hospital, Kollam, which would show that the extent of permanent partial disability as assessed by the Medical Board is 25%. But according to the learned counsel appearing for the Insurance Company, the Department of Orthopaedics, Medical College, Thiruvananthapuram assessed the disability at 20%. However, such certificate is not produced on record. Admittedly, the employee has been examined by the Medical Board pursuant to the orders passed by the Commissioner for Workmen's Compensation and 25% disability has been assessed. Therefore,

even if the Insurance Company's contention is accepted, then they will bound to pay an amount of Rs.10,000/-. Though a specific contention was raised that the policy issued in this case will not cover the liability under the Workmen's Compensation Act, the Commissioner did not consider this question in the proper perspective rather than proceeded to assess the total compensation and merely because there is a group insurance policy the liability was fastened on the Insurance Company. Therefore, the decision of the Workmen's Compensation Commissioner in this regard is wrong. It is for the Commissioner to refer to the contention as raised by the Insurance Company as to whether the group insurance policy issued in this case is a policy which would cover any liability under the W.C.C. Act. If not what is the liability as per that policy based on the certificate

issued. Eventually if it finds that the policy issued will not cover the liability under the W.C.C. Act, the Insurance Company cannot be made liable over and above the extent of the liability, they have contracted as per the policy. In these circumstances, the judgment of the Workmen's Compensation Commissioner is set aside to the extent it has fastened the liability over an amount of Rs.10,000/- (since the Medical Certificate on record shows 25% disability). However, after reconsidering the matter, if the Workmen's Compensation Commissioner comes to the conclusion that the policy issued covers the liability under the W.C.C. Act, appropriate orders will be passed, after hearing the parties concerned.

2. Though a cross objection is filed, in view of the fact that the appeal itself is allowed and remanded for fresh consideration, it is open to the respondent-claimant to raise

his contention that the compensation awarded is less than what is actually due to him. That cannot be gone into in these proceedings. If ultimately the Insurance Company is not liable for any amount over Rs.10,000/-, the cross objection as against the Insurance Company will not lie. Further the cross objection as against the co-respondent will not validly lie.

Appeal is disposed of as above.

Parties shall appear before the Court of the Workmen's Compensation Commissioner on 07/03/2007. Records may be sent back without delay.

P.R.RAMAN,
Judge.

kcv.